IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 302 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SASHINAGAR AVNISHKUMAR NAGAR

Versus

STATE OF GUJARAT

Appearance:

MR JJ YAJNIK for Petitioner No. 1

MR LJ POOJARI APP for Respondent No. 1

SERVED BY AFFIX.-(R) for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/12/2001

ORAL JUDGEMENT

Learned advocate Mr. J.J Yagnik is consistently absent. Heard the learned APP Mr. L.R Poojari for the respondent-State.

This Revision Application arises from the application for maintenance made under Section 125 CrPC by the deserted wife.

The petitioner before this Court is the applicant-wife. She had filed Criminal Misc. Application NO. 64 of 1988 in the Court of learned Judicial Magistrate, First Class, Dahod for maintenance under Section 125 CrPC. It was the claim of the petitioner that she had married the respondent no. 2 on 6th December, 1987, according to Hindu rites at Dahod. The respondent no. 2, at the relevant time, was serving in Rajasthan. It was the case of the applicant that after her marriage to the respondent no. 2, she went to reside with the parents of the groom, the respondent no. 2. She was harassed by the parents of the respondent no. 2 for dowry. She was not allowed to go and reside with the respondent no. 2 at the place of his employment and the respondent no. 2 had also refused to take her to the place of his employment under the guise of inflation and additional expenditure. She was not allowed to correspond with her parents nor the correspondence received from her parents was allowed to be read by the applicant. After she went to her parents in the month of February, 1988 i.e., some two months after the marriage, she was not permitted to come back to her matrimonial home. The respondent no. 2 was a school teacher and was earning Rs. 1,500/= a month. He had deserted the applicant and had neglected to maintain her. The said application was contested by the respondent no. 2. He denied the allegations made against him and his parents. He produced certain letters to show that the applicant was residing with him at Bhagpur, the place of his employment. It was also contended that the applicant was teacher in the Government School and was capable of maintaining her. The applicant was not willing to reside with the respondent no. 2. The respondent no. 2 had applied for decree for restitution of conjugal rights in the court at Udaipur. The learned Magistrate, under his judgment and order dated 26th March, 1991 was pleased to hold that the evidence of the applicant was truthful and reliable, was given without exaggeration. The learned Magistrate having appreciated the letters produced by the respondent no. 2 was pleased to reject the contention that the applicant was residing with the respondent no. 2 at Bhagpur. The learned Magistrate was pleased to hold that it was the applicant who was harassed for dowry and was deserted by the respondent no. 2. She was neither employed nor was she capable of maintaining herself. Considering the income of the respondent no. 2 and his

other liabilities/absence of any other liability, the learned Magistrate was pleased to allow monthly maintenance of Rs. 250/= to the applicant-petitioner.

Feeling aggrieved, the respondent no. 2 preferred Criminal Revision Application No. 31 of 1991 before the Court of learned Sessions Judge at Panchmahals. The learned Addl. Sessions Judge was pleased to take into consideration the decree for restitution of conjugal rights passed by the Family Court at Udaipur in the year 1992 and to hold that it was the applicant who had deserted the respondent no. 2. Besides, in the event the wife refuses to abide by the decree for restitution of conjugal rights passed against her, she should be denied maintenance. The learned Judge was, therefore, pleased to allow the Revision Application and to set-aside the award of maintenance made by the learned Magistrate. Feeling aggrieved, the applicant wife has preferred the present application.

I am of the view that the learned Judge below has erred in exercising his revisional jurisdiction and in upsetting the findings recorded by the learned Magistrate. It is beyond the scope of the revisional jurisdiction to reappreciate the evidence and to substitute the findings recorded by the court below. The learned Judge has also erred in holding that, `even if there were some taunts or demands for dowry, it cannot be said that they furnished a reasonable cause to the wife to leave the home of the husband and never to return..' I am afraid, the law is to the contrary. Even the mental harassment caused by consistent demands for dowry or by throwing abuses amounts to cruelty which should justify the claim for maintenance made by the deserted wife. Further, the learned Judge ought not to have upset the order of the learned Magistrate relying upon the decree for restitution of conjugal rights passed by the Family Court at Udaipur, long after the order of maintenance made by the learned Magistrate.

In above view of the matter, I am of the opinion that the learned Magistrate was right in holding that the applicant-petitioner was subjected to mental cruelty and she was entitled to maintenance from the respondent-husband. The Revision Application is, therefore, allowed. The judgment and order dated 21st November, 1992 made by the learned Addl. Sessions Judge, Panch Mahals in Criminal Revision Application No. 31 of 1991 is quashed and set-aside. The judgment and order of the learned Judicial Magistrate, First Class, Dahod passed in Criminal Misc. Application No. 64 of 1988 is

restored. The respondent no. 2-husband shall pay the arrears of maintenance in accordance with the order made by the learned Magistrate within six months from today. The respondent no. 2 shall pay the maintenance as ordered by the learned Magistrate regularly commencing from 1st January, 2002. Rule is made absolute. The registry is directed to send the writ forthwith.

[Miss R.M Doshit, J.]

Prakash*